JUDICIAL DECISIONS ON PUBLIC LAW

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Aliens—Temporary Naturalization. In re Naturalization of Aliens in Service of Army or Navy of United States (U. S. District Court, June 14, 1918, 250 Fed. 316). This case raises the question whether an alien soldier or sailor in the service of the United States may become naturalized when he states upon his examination that he does not intend to reside permanently in the United States but intends to return to his native country as soon as he is discharged from service. The court decided that while the naturalization laws are silent upon this point, "the intentions of Congress that there should be no naturalizations for temporary purposes may be deduced from Act March 2, 1907, which provides for a forfeiture of naturalization, if the naturalized citizen shall have resided for two years in the foreign state from which he came." It is the opinion of the court that "to seek to be naturalized temporarily would be a fraud on the nation, and clearly in conflict with the oath of allegiance."

Congress—Qualifications of Members—Power of State to Regulate. State v. Howell (Washington, October 16, 1918, 175 Pac. 569). The constitution of Washington contains a clause providing that judges of the supreme court and of the superior court shall be ineligible to any other office or employment during the term for which they shall have been elected. A judge of the state supreme court whose term would have expired in 1921 resigned in May, 1918, in order to become a candidate for membership in the national house of representatives. An injunction was asked to restrain the secretary of state from printing his name on the primary ballot on the ground that he was ineligible under the provision of the state constitution mentioned. The court refused to issue the injunction. The qualifications for membership in the houses of Congress are laid down in the Constitution of the United States and no state has any authority to add to or subtract from those qualifications. While the state, in the absence of federal legislation, has power to ar-

range the manner of nominating candidates for Congress, that power does not give it any authority to determine the qualifications of those seeking nominations for those offices.

Freedom of Press—Power of Municipalities to License Circulation and Sale of Newspapers. Star Company v. Brush (New York, Supreme Court, September, 1918, 172 N. Y. Supp. 320). In the case of Star Company v. Brush, 170 N. Y. Supp. 987, it was decided that an ordinance of the city of Mt. Vernon, New York, forbidding the publication or sale of foreign language newspapers together with that of two New York newspapers specifically named in the ordinance was unconstitutional. Thereupon the city council and mayor of Mt. Vernon enacted the ordinance the validity of which is questioned in this case. This ordinance forbade the circulation or sale of any newspapers by anyone who had not first secured from the city council a license. These licenses were to be issued in the practically absolute discretion of the council and were revokable without notice. This ordinance met the fate of its predecessor. The court pointed out that under its provisions the city council had authority to say which, if any, newspapers might be sold and could arbitrarily suppress those which might display political hostility toward the city fathers. Such an ordinance contravenes the provision of the state constitution guaranteeing freedom of the press.

Intoxicating Liquors—Prohibition—Constitutionality. Schmitt v. F. W. Cook Brewing Co. (Indiana, June 28, 1918, 120 N.E. 19). The power of a state legislature to prohibit the manufacture and sale of intoxicating liquor is no longer open to question. This case adds another decision to a long line of authorities. It is interesting, not because it presents any novel arguments in support of the prohibitory power, but because of the attitude which the court assumes toward an early decision holding a prohibition law unconstitutional. "The principle of *stare decisis*," says the court, "if it existed, has no application to the police power because there can be no property rights which are not subject to this power. . . . . If this were not so, mistaken decisions would destroy that very power of society to protect itself and a new constitution would be created by the courts. Courts cannot decide away that which the state cannot contract away. Courts cannot make a new fundamental law by erroneously reading limitations into the Constitution not therein expressed. The principle of *stare decisis* is a rule of property the use of which does not affect the public welfare. It cannot be invoked to shut off the police power."

Minimum Wage—Constitutionality. Holcombe v. Creamer (Massachusetts, September 23, 1918, 120 N.E. 354). The Massachusetts minimum wage law was enacted in 1912 and amended during the two succeeding years. It provided for the creation of a minimum wage commission which could appoint wage boards to investigate wage conditions of women in individual industries and report their findings and determinations of what constitutes reasonable minimum wages to the commission. After a review of these determinations and a hearing for the employers concerned if they desire it, the names of such employers as refuse to pay the minimum wage thus declared to be reasonable are to be published in the newspapers throughout the state. The commission was authorized to institute subsequent investigations to determine whether or not the employers concerned are actually paying the specified minimum wage. This is an action by the petitioners to compel the respondents to give information at such an investigation to ascertain such compliance or noncompliance with the law. The refusal of the employers concerned to testify was based on the alleged unconstitutionality of the law. The law is held to be constitutional. In the first place a minimum wage is not imposed upon any employer by penalty of the law, and the only force back of it is the force of public opinion. The law is therefore free from the attack which might be launched against a compulsory minimum wage law. In the second place a review of a long list of authorities indicates that in multifarious ways the state may constitutionally interfere with the freedom of contract between employer and employee in the legitimate exercise of its police power. The regulation of the freedom of contract involved in this law is less rigorous than in many of those statutes. Finally since no criminal action may be instituted against any employer for noncompliance with the wage determinations made by the commission it cannot be said that an employer is obliged to incriminate himself when he is compelled to testify as to the fact of his observance of such wage determinations.

Police Power—Freedom of Contract—Regulation of Tips. Ex parte Farb (California, July 30, 1918, 174 Pac. 320). This case involves the validity of a statute enacted in 1917 which forbade any employer from making it a condition of employment in his service that any employee must enter into a contract to surrender to such employer all tips received while in his employ. This law was held unconstitutional. While the state might in the exercise of its police power pass laws to mitigate or

prevent the abuses arising from the custom of tipping, this law cannot be said to have any such effect and cannot therefore be said to have any substantial relation to the public welfare. Many different kinds of police regulations have been passed restricting the freedom of contract of employers and employees but in each case the purpose has been to protect the health, safety or morals of the employees or promote the general welfare. There are no such considerations of public welfare to justify the interference with freedom of contract herein involved. The court repudiates the argument that the law could reasonably be supposed to prevent fraud upon the patrons who tip. The act is, accordingly, a violation of due process of law.

Police Power—Ordinance Regulating Patent Medicines. Fougera & Co. v. City of New York (New York, October 15, 1918, 120 S. E. 642). Certain sections of the sanitary code adopted by the board of health of the city of New York provide in substance that there shall be no sale of patent or proprietary medicines unless the names of the ingredients shall be registered in the department of health. This information is to be regarded as confidential. There must also be filed a copy of all advertising matter distributed with any such medicines and they are to be regarded as misbranded if the names of any of the ingredients are omitted or misstated or if any false statements are made regarding the therapeutic effects. The plaintiff alleges that it is the importer of certain patent medicines from foreign countries, that it does not know the names of their ingredients and cannot learn them. The constitutionality of the ordinance is attacked on two grounds, first, that it is an arbitrary exercise of governmental power and not within the proper scope of the police power, second, that it is an exercise of power in excess of that delegated by the legislature to the city. The court regards the purpose of the ordinance as legitimate. It aims directly at the preservation of the public health and safety and is reasonably designed to accomplish that salutary purpose. There is no force in the claim that the ordinance requires dealers in patent medicines to give evidence against themselves because it merely lays down the conditions under which that business may be carried on and the requirement of publicity cannot be regarded as compulsory self-incrimination. The ordinance does not violate the federal constitution by interfering with interstate or foreign commerce since there is no conflict between it and any act thus far passed by Congress. The ordinance is, however, fatally defective in that it does not exempt from the application of its provisions

the dealers who, like the plaintiff, have on hand stocks of patent medicines the ingredients of which they do not know and cannot find out. In regard to the existing stores of merchandise in the hands of dealers the ordinance operates as an absolute prohibition of sale and not a mere regulation. The condition of sale is impossible of fulfillment and the ordinance results, therefore, in an actual forfeiture of property. There is no power, even in the legislature, to work such a forfeiture and *a fortiori* there is no such power which can be implied from the grant of authority contained in the New York City charter. Since the ordinance cannot be so construed as to separate the part which is valid from that which is not, the whole ordinance must be declared void.

Police Power—Time of Wage Payments. Moore v. Indian Spring Channel Gold Mining Co. (California, May 28, 1918, 174 Pac. 378). It is a legitimate exercise of the police power to require that any employer who discharges an employee must pay the wages due immediately under a penalty recoverable by the employee. Such an act involves no deprivation of property without due process of law. It is aimed to assure to the laborer the prompt payment of his wages and as such has an intimate connection with the welfare of employees and of the public. An earlier statute was declared unconstitutional (In the Matter of Crane, 26 Cal. App. 22; 145 Pac. 733) because a criminal penalty was attached to the failure to pay wages promptly to discharged workmen and this was declared to be a violation of the clause of the state constitution forbidding imprisonment for debt. The penalty attached to the violation of this statute is not criminal but civil and remedial and, therefore, the objection does not lie.

War Problems. *Alien Enemies—Right of Declarants to Vote.* State v. Covell (Kansas, November 9, 1918, 175 Pac. 989). Among those qualified to vote in the state of Kansas are "persons of foreign birth who shall have declared their intention to become citizens conformably to the laws of the United States on the subject of naturalization." The question arises in this case whether or not German and Austrian subjects who have thus declared their intention to become American citizens may be denied the right to vote. The court admits that the language of the constitution does not seem to leave room for discussion on that point, but it finds a way nevertheless to avoid such a result. "There are aliens and aliens," declares the court, "and alien friends may become citizens of our country, but alien enemies cannot, and evidently the

people who framed and adopted our Constitution were speaking of that class of aliens who might complete naturalization and become citizens of this country, and not of those who could not under any circumstances be admitted to citizenship." The court points out that under the literal interpretation of the clause in question subjects of nations at war with this country might have the power to elect the Congress or even the President. It follows from all these considerations that declarant enemy aliens cannot be allowed to vote.

Espionage Act—False Statements regarding Army Y. M. C. A. and Red Cross. United States v. Nagler (U. S. District Court, July 25, 1918, 252 Fed. 217). The Espionage Act makes it a crime for anyone "wilfully to make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States." This case holds that the Red Cross and the army Y. M. C. A. constitute part of the military and naval forces of the United States, by reason of the intimate connection they bear to the actual fighting forces and by reason of the responsibilities which have been placed upon them by the government. It is, therefore, a violation of the Espionage Act to make false statements which will interfere with the success of these organizations and the defendant in this case who branded both organizations as groups of "grafters" was properly indicted under the statute.

Labor Unions—Right to Strike during War. Rosenwasser Bros. v. Pepper (New York, Supreme Court, October, 1918, 172 N. Y. Supp. 310). The plaintiffs were engaged in the manufacture of shoes for the United States government. They seek a permanent injunction against the defendants to restrain them from continuing to strike, from inciting any of the employees of the plaintiff to strike, and from all acts of violence, picketing, etc. There was, of course, no question as to the right of the plaintiff to injunctive relief from acts of violence. The court declared that under antebellum conditions it is the established law of the state of New York "that a labor union may induce or persuade the employees of a manufactory or other business, which is conducted by the owner thereof either as an open or a nonunion shop, to become members of the union, and to strike in order to compel the owner to conduct his factory or business as a union shop." But under war conditions, in the light of the paramount importance of providing steadily and without interruption the supplies necessary for the conduct of the

war, and in the light of the equitable and satisfactory provisions which the government of the United States has provided for the adjustment of differences arising between employers and employees in war industries by means of mediation, it cannot be said that the right of labor to strike remains absolute and unimpaired. Consequently an injunction should issue to restrain any repetition of the acts of violence which have already occurred and also an injunction against "strikes for any cause whatever" for the duration of the war. It shall be lawful within the terms of the injunction, however, for the defendants to "persuade the plaintiff's employees to join the union" or "demand of the plaintiff anything they deem of advantage to the employees or the union," and "may seek the attainment of their demands by application to the United States government, or the government of the state of New York."

Selective Service Act—Deferred Classification Based upon Conviction for Crime—Effect of Pardon. United States v. Commanding Officer of 87th Division (U. S. District Court, June 3, 1918, 252 Fed. 314). This case comes up on the petition of one Schwartz for a writ of habeas corpus to be released from military service. He was inducted into military service under the provisions of the Selective Service Act. He claims that he should have been placed in deferred class 5H inasmuch as he was convicted of murder in the state of Mississippi in the year 1912 and falls, therefore, within the class of moral delinquents. It appeared that subsequent to his conviction for felony he was pardoned by the governor of Mississippi on the condition that he should leave that state and never return. It is held in this case that the effect of the pardon was to remove all the legal effects of the crime. It is inconceivable, in the judgment of the court, that the draft regulations should have the effect of depriving a person who had received a full pardon for crime "of one of a citizen's greatest privileges, to bear arms in the defense of his country."

Selective Service Act—Desertion—Precedence Between Civil and Military Prosecutions. Ex parte Dunn (U. S. District Court, January 9, 1918, 250 Fed. 871). This is a petition for a writ of habeas corpus. The petitioner failed to register for the draft and a prosecution was instituted against him in a United States district court. While this action in the civil court was pending he was notified to report for military service and when he failed to do so he was arrested by the military authorities,

tried by court-martial, and sentenced to the penitentiary. The court repudiated the petitioner's contention that during the pendency of the action against him in the civil courts he was exempt from military service. Such a result is in conflict with the general purpose and tenor of the Selective Service Act. The acts of the petitioner made him an offender against both the criminal and military law of the United States. The question as to which jurisdiction should deal with him first is one which is to be settled between the military and civil authorities and the prisoner has no right to be tried first by the civil courts.

War Materials—Priority of Government Orders—Effect on Private Contracts. Moore & Tierney v. Roxford Knitting Co. (U. S. District Court, July 1, 1918, 250 Fed. 278). Under the provisions of the National Defense Act, June 3, 1916, and the Naval Appropriation Act, March 4, 1917, it is obligatory upon manufacturers from whom the United States government orders supplies to comply with such orders and to give precedence to such orders over any which may have previously been placed by private persons. In this case the plaintiff had contracted with the defendant to supply certain materials. Demands for war materials were then made upon the plaintiff by the office of the paymaster of the navy and precedence was given to these demands with the result that the goods which the defendant had contracted for were not delivered at the stipulated time. It was admitted that the paymaster of the navy did not couch his demands for supplies in the form of a formal order which by its own terms should be immediately obligatory, nor was any specific reference made to the two acts of Congress referred to. It was held by the court, however, that in order for the plaintiff to come within the provisions of these statutes it was not necessary for the requirements of the government to be phrased in the language of a formal command. It was enough that the plaintiff understood that immediate compliance was expected and that the filling of the government's requirements was not optional on his part. If the plaintiff had refused such compliance with the demands made upon him he would have been liable to damages and would also have laid himself open to the possibility of having the government take summary possession of his plant. Under these circumstances the defendant is without remedy for the plaintiff's failure to perform his contract obligations within the required time.